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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing	)	
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Filing Date: November 8, 2022	)	Case No.: PSH-23-0015
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Issued: March 29, 2023

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

**I. Background**

A DOE Contractor employs the Individual, a military veteran, in a position for which he holds a security clearance. In May 2019, the Individual completed and submitted a Questionnaire for National Security Positions (QNSP). In July 2019 the Individual was arrested for Driving While Intoxicated (DWI) after consuming four to five alcohol beverages, which the Individual properly reported to the DOE Local Security Office (LSO) following his release from detention. Exhibit (Ex.) 12 at 2. As part of the investigation process associated with the submitted QNSP, the Individual was subject to an Enhanced Subject Interview (ESI), which was conducted by an investigator in September 2019. Ex. 17 at 91. The LSO subsequently issued two Letters of Interrogatory (LOI) to the Individual requesting additional details regarding his arrest and alcohol consumption. The Individual signed and submitted his responses to the LOIs in October 2019 and October 2020. Ex. 13 and Ex. 14.

In June 2022, the Individual was arrested for DWI after consuming "four beers and three shots of alcohol." Ex. 11 at 9. The LSO subsequently instructed the Individual to undergo a psychological

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<sup>1</sup> The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in July 2022. Ex. 15. The DOE Psychologist relied on the information she obtained in a clinical interview with the Individual, as well as her review of the Individual's Personnel Security File (PSF) and the *Diagnostic Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition*. *Id.* at 2. The DOE Psychologist issued a report (the Report) in August 2022, containing her assessments and conclusions, which included a diagnosis of Alcohol Use Disorder (AUD), Moderate, in Early Remission. *Id.* at 9.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of five other witnesses. *See* Transcript of Hearing, Case No. PSH-22-0015 (hereinafter cited as "Tr."). The Individual also submitted four exhibits, marked as Exhibits A through D. The DOE Counsel submitted seventeen exhibits marked as Exhibits 1 through 17 and called one witness, the DOE Psychologist.

## **II. Notification Letter and Associated Concerns**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE raised security concerns under Guidelines G and J of the Adjudicative Guidelines. Ex. 1.

### **A. Guideline G**

Under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, "excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "[a]lcohol-related incidents away from work, such as driving while under the influence...regardless of frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]" and "[d]iagnosis by a duly qualified medical or mental health professional...of alcohol use disorder[.]" *Id.* at ¶ 22(a) and (d).

In invoking Guideline G, the LSO alleged that in July 2022, the Psychologist diagnosed the Individual with AUD, Moderate, in Early Remission. Ex. 1 at 1. The LSO also alleged that in June 2022, the Individual was arrested and charged with DWI, after consuming "four beers and three shots" and that the Individual was arrested and charged with DWI in July 2019 after consuming

“six to eight mixed drinks, and one shot of whiskey prior to his arrest.” Ex. 1 at 1. Based on the foregoing, the LSO’s invocation of Guideline G is justified.

### **B. Guideline J**

Guideline J states that criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness and that, by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines at ¶ 30. Conditions that could raise a security concern under Guideline J include “[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Ald.* at ¶ 31(b).

In invoking Guideline J, the LSO alleged that the Individual was arrested and charged with DWI in July 2019 and June 2022, and that in April 2001, the Individual was arrested and charged with “DWI involving Drugs.” Ex. 1 at 1-2. Based on the foregoing, the LSO’s invocation of Guideline J is justified.

## **III. Regulatory Standards**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting their eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **IV. Findings of Fact and Hearing Testimony**

During the September 2019 ESI, not only did the Individual provide information regarding the 2019 incident, but he was also confronted with an April 2001 arrest for DWI. Ex. 17 at 93. The Individual clarified that this DWI incident did not involve alcohol, but rather, illicit drugs. *Id.* He told the investigator that he was stopped by law enforcement while on the way home after smoking an illicit substance, and subsequently resolved the matter by serving one year of probation. *Id.*

Before his arrest in July 2019, the Individual consumed “approximately [four to five] mixed drinks” while dining with friends. Ex. 12 at 2; Ex. 14 at 3; Ex. 17 at 92. Later that evening, the Individual went to a friend’s home, where he continued to drink, consuming “[two to three] more drinks and possibly a single shot of whiskey.” Ex. 14 at 3; Ex. 17 at 93. During the ESI, the Individual told the investigator that he had consumed “three or four” alcoholic beverages at the second location. Ex. 17 at 93. The Individual reported that after he went home for the evening, he felt nauseated and had a headache and believed that he was suffering from “allergy issues and decided to take a Benadryl and [Aleve.]” Ex. 12 at 2; Ex. 14 at 4; Ex. 13 at 2. Later, the Individual decided to drive himself to a restaurant and struck a car after “misjudg[ing] a turn” while feeling “extremely sick[.]” Ex. 12 at 2-3. The Individual told the investigator during the ESI that he was “stopped in the parking lot . . . for an unknown reason.” Ex. 17 at 93. He was arrested for DWI after being questioned by responding law enforcement personnel and, according to what he told the investigator, “he [did] not recall” whether he submitted to field sobriety tests. Ex. 12 at 2-3; Ex. 14 at 4. The Individual refused to submit to a breath alcohol test prior to his arrest and remained in the custody of law enforcement until the following day. Ex. 12 at 4; Ex. 17 at 93. While in custody, “[a] blood sample was taken from the [Individual.]”<sup>2</sup> Ex. 17 at 93. The Individual properly reported this incident to the LSO the following day.<sup>3</sup> Ex. 12 at 1. In his October 2019 LOI, he stated that “[his] memory [was] very vague as to the events that happened” after he took the Benadryl and Aleve, and stated that a Licensed Professional Counselor (LPC) subsequently suggested that he may have “unintentionally taken sleeping medication,” which would explain his “loss in memory.”<sup>4</sup> Ex. 14 at 4-5; Ex. 13 at 2. He stated in the LOI that he was “unaware of any vehicles that were hit[.]” and that he “believe[d] a call was made to the [p]olice [d]epartment concerning [his] driving.” Ex. 14 at 5.

In the October 2019 LOI, the Individual asserted that had been abstinent from alcohol since the July 2019 incident, and stated that his alcohol consumption had varied over the previous five years, in that he would drink “occasionally once or twice a month[.]” then go some months without consuming alcohol at all. Ex. 14 at 1; Ex. 13 at 2. On weeknights, he would limit himself to one to two alcoholic beverages, and on the weekend, he “would consume anywhere from [six to seven] mixed drinks . . . throughout a prolonged period [of five to six hours.]” Ex. 14 at 1. He stated that he “was not an excessive drinker,” but he also acknowledged that he would reach intoxication two or three times per year in social or celebratory settings. *Id.* at 1, 3. He also stated that he was last

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<sup>2</sup> In the October 2020 LOI, the Individual indicated that the results of the blood alcohol test registered at 0.63. Ex. 13 at 1.

<sup>3</sup> The Individual was subject to a breath alcohol test at the behest of his employer the day he reported the incident, the results of which were negative. Ex. 12 at 5.

<sup>4</sup> He disclosed the use of a prescription sleep medication to the LPC who suggested that his symptoms were more consistent with the use of said medication. Ex.13 at 5. He could not state with certainty that he had accidentally used his prescription sleep medication in lieu of Aleve, and stated that if he did, “it was 100% [a] mistake.” *Id.* at 5-6. The Individual stated in his October 2020 LOI that he had “not experienced any blackouts[.]” since that event. *Id.* at 4. At the time of the of his late 2019 meeting with the LPC, the Individual was taking approximately five different prescription medications and denied using his medication “simultaneously with alcohol.” *Id.* at 6-7. He has since discontinued the use of the sleep medication at issue and denied the misuse of prescription medication. Ex. 13 at 7-8; Tr. at 88-89. The LPC told the investigator that the Individual was “addicted and abusing his medications.” Ex. 15 at 4; Ex. 17 at 101.

intoxicated on the day of the incident in July 2019. *Id.* at 3. At the time of the October 2019 LOI, the Individual had “not attended any out-patient services related to [the] DUI arrest.” *Id.* at 6.

In his October 2020 LOI, the Individual disclosed he met with his employer’s occupational psychologist,<sup>5</sup> every four to six weeks, from approximately July 2019 until July 2020, attending a total of eleven meetings. Ex. 13 at 3. The Individual also disclosed that he had abstained from alcohol while he was meeting with the occupational psychologist. *Id.* at 2. He admitted that once he stopped meeting with the occupational psychologist, he had consumed alcohol “on a few occasions.” *Id.*; Tr. at 131. The Individual testified that he began consuming alcohol again in 2020, and that nothing in particular caused him to begin drinking again. Tr. at 131-32.

The Individual also disclosed in the October 2020 LOI that he had attended one-on-one alcohol counseling sessions with the aforementioned LPC. Ex. 13 at 2. At the time he completed the LOI, he was no longer seeing the LPC, as he was “not required [to].” *Id.* at 3. He did state that he found their meetings “extremely beneficial” and that the LPC “was there to talk and help [him] process all of the emotions [he] was going through at the time.” *Id.* The Individual began treatment with the LPC in August 2019, attending a total of nine sessions. *Id.* at 11.

Upon the recommendation of the LPC and occupational psychologist, the individual enrolled in and completed a six-week, 72-hour, intensive out-patient program (IOP) in early 2020. *Id.* at 2, 4; Tr. at 127. Following the completion of the IOP, he attended an after-care program, once per week, until the program was cancelled due to COVID-19. Ex. 13 at 4; Tr. at 127-28. He did not feel comfortable attending in-person aftercare sessions once they restarted, and at the time of the October 2020 LOI, he had only attended four aftercare sessions from February 2020 to March 2020. Ex. 13 at 11. The Individual also noted in his October 2020 LOI that he received four sessions of one-on-one counseling from March 2020 to September 2020 from another provider at the same location he was seeing the LPC. *Id.*; Tr. at 129.

The Individual reported that before his June 2022 arrest, he consumed “four beers and three shots of alcohol” during a reception. Ex. 11 at 9. The Individual reported that, at the time, he “felt confident enough to drive, as the drinks were consumed over a six-hour period.” *Id.* While driving home, he stopped to make a purchase, and when he continued on his route, the Individual fell asleep at a stop light and “noticed the cops had pulled up” when he woke up. *Id.*; Tr. at 199-20. After law enforcement personnel discovered the Individual, he refused to submit to a breath test. Ex. 15 at 3. At that point, the Individual was transported to a medical facility to have his blood drawn for testing. *Id.* During the July 2022 clinical interview with the DOE Psychologist, the Individual told the DOE Psychologist that he felt capable of driving home after consuming alcohol on the day of the 2022 incident. *Id.* He stated that he had only closed his eyes “for a minute” while at a traffic light, and when he opened his eyes, he saw that he was being approached by law enforcement. *Id.* He was subsequently taken to a medical facility for the blood draw. *Id.*

As a result of the 2022 DWI, beginning in early June 2022, the Individual’s employer required him to undergo random breath alcohol testing, undergo monthly Phosphatidylethanol (PEth) testing to “detect[] any significant alcohol use over the past three or four weeks[,]” attend a

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<sup>5</sup> The occupational psychologist evaluates the Individual for purposes of his certification in the Human Reliability Program (HRP). Tr. at 130; Ex. 13 at 3.

substance abuse evaluation and comply with any treatment recommendations, and attend monthly follow-up meetings with the same occupational psychologist he saw after the 2019 incident. Ex. 10 at 4; Ex. 15 at 6-7; Tr. at 108, 129-30, 129-30. The Individual submitted to eight PEth tests from July 2022 to February 2023, all of which were negative. Ex. B; Ex. 9 at 3; Ex. 8 at 3; Ex. 7 at 2; Tr. at 108, 126. He was also tested for illicit substances in July 2022, and those results were negative. Ex. 9 at 4-5. The Individual was also referred back to the same organization where he completed the first IOP, and after speaking to a provider there regarding his prior experience with their program, it was “recommend[ed] that he attend a different program, since he had previously completed theirs.” Ex. 15 at 5; Tr. at 93-94.

During the July 2022 clinical interview, the Individual told the DOE Psychologist that he used alcohol to put him at ease in social settings. Ex. 15 at 4. However, he did not provide the DOE Psychologist with any specifics regarding his alcohol consumption in the twelve months preceding the 2022 incident. *Id.* at 5. The Individual told the DOE Psychologist that he had been abstinent since the 2022 incident, and that he “got complacent” following the 2019 incident, and accordingly, began drinking again. *Id.* He acknowledged that he could not drink in moderation and stated his intention to remain abstinent. *Id.* The DOE Psychologist noted that the Individual had previously been diagnosed with Posttraumatic Stress Disorder (PTSD), but that “he [was] no longer experiencing symptoms of that condition other than social discomfort[.]” *Id.* at 6. The Individual also indicated that he continued to meet with his employer’s occupational psychologist on a monthly basis so that he may be monitored. *Id.*

In conjunction with the psychological evaluation, the Individual submitted to a PEth test, the results of which were negative. *Id.* at 7. The DOE Psychologist diagnosed the Individual with AUD, Moderate, in Early Remission, and concluded that he did not present adequate evidence of rehabilitation or reformation. *Id.* at 8-9. Accordingly, she recommended that the Individual enter and successfully complete an IOP through the Veterans Administration (VA) or The Next Step program and complete an aftercare program. *Id.* at 9. The DOE Psychologist further recommended that if the Individual decided not to participate in an IOP, he should participate in an Alcoholics Anonymous (AA) 12-step program, including attending four meetings a week, working with a sponsor, and documenting his attendance. *Id.* Lastly, the DOE Psychologist also recommended that the Individual should continue to undergo monthly PEth testing and stated that he “needs at least [twelve] sustained months of intervention . . . regardless of which option he chooses to address his alcohol consumption.” *Id.*

Following the meeting with the DOE Psychologist, the Individual enrolled in a ninety-day IOP with the VA in late August 2022, and successfully completed the program in November 2022. Ex. C; Tr. at 24. The IOP, which also had a “PTSD track,” consisted of three-hour classes, three days per week. Ex. A; Tr. at 15-16, 23, 133-35. The classes included “anger management, relapse prevention, Cognitive Behavior Therapy (CBT), Dialectical Behavioral Therapy, and [PTSD] treatment.” Ex. A; Tr. at 15-16, 98, 133-35. The evidence revealed that the Individual would attend more than the required three hours on a weekly basis, opting to attend classes and group on Friday for the last three to four weeks of the IOP. Tr. at 16, 20-21, 23, 86, 133-36. The Individual also participated in one-on-one therapy during that time. Ex. A. One witness who testified at the hearing on the Individual’s behalf was a peer support individual who was a veteran in sustained recovery and interacted with the Individual in the IOP classes on at least a weekly basis. Tr. at 14-15, 19,

29. The peer support individual testified that the Individual was an active participant, and that he believes that treating PTSD also provides individuals with “a better chance at maintaining recovery.” *Id.* at 16-18, 27-28. He also testified that the group programs discuss “coping skills to manage trauma,” and that he felt the Individual “was learning” and “growing,” as evidenced by the Individual’s engagement. *Id.* at 18-21, 27.

Another witness who testified on the Individual’s behalf was a clinical social worker who saw the Individual for one-on-one therapy after he began the IOP in August 2022. She testified that she “work[ed] with veterans who [were] working towards either gaining or maintaining sobriety as well as working on PTSD.” *Id.* at 33-34, 42, 137-38. She confirmed that the Individual suffers from PTSD and addiction, and that the Individual participated appropriately in the Friday “PTSD-focused group[]” that she led. *Id.* at 33-34, 39, 42, 45. She described the one-on-one therapy as being a written exposure therapy focused on PTSD, confirmed that the Individual’s PTSD symptoms had improved, that she had seen positive changes, and that the Individual had “obtain[ed] the tools he . . . need[ed] to mov[e] forward[.]” *Id.* at 34-38, 98-101. She clarified that according to program standards, they “consider any group participation while a veteran is in sustained recovery to be follow-up aftercare,” and that the Individual chose to participate in aftercare once he met his one-on-one therapy goals. *Id.* at 38-39. The Individual last attended one-on-one therapy in January 2023. *Id.* at 45, 137. Following his completion of the IOP, the Individual continued to attend three hours of aftercare sessions on Fridays consisting of recreational therapy sessions “geared toward both PTSD and substance use[]” as well as PTSD and relapse prevention classes. Ex. A; Tr. at 24, 26-29, 39-40, 43-44, 101-04; Ex. D.

While attending the IOP, the Individual was subject to substance testing, and to the knowledge of the clinical social worker, he never tested positive for alcohol or other substances. Tr. at 21-22, 40-41. She also indicated that urine drug testing was conducted on a weekly basis and that at least one blood alcohol test was administered at the start of the IOP. *Id.* at 41-42.

The Individual’s coworker testified that he has known the Individual for approximately six or seven years, and that they engage in social activities and keep in touch with each other outside of work. *Id.* at 48-49, 55-57. He testified that he has noticed the Individual has become more self-reflective since he began attending programs at the VA and said that the Individual has “taken responsibility for his actions.” *Id.* at 49-51. He described the Individual as honest and forthcoming, and confirmed that he has never had a reason to “doubt [the Individual’s] honesty, judgement, or reliability[.]” *Id.* at 51-52. The Individual’s coworker testified that the Individual asserted his intention to never consume alcohol again, and that he had not been aware of the Individual’s excessive alcohol consumption prior to the most recent incident. *Id.* at 52-55. Further, he indicated that he has not seen the Individual consume alcohol since the incident, and that he had never known the Individual to come to work in a hungover or intoxicated state. *Id.* at 57, 60.

Another one of the Individual’s colleagues, a manager, testified that the Individual had been very open and honest about losing his clearance, and that his work schedule accommodates the Friday aftercare sessions at the VA. *Id.* at 63-66, 104. To her knowledge, he attends aftercare regularly and has benefited from aftercare, and she also stated that the Individual has taken full responsibility for his behavior. *Id.* at 65-66. She also confirmed that she has never had any reason to doubt his honesty, trustworthiness, and judgement, and that she has never known him to report to work under

the influence of alcohol, in an impaired state, or suffering from a hangover. *Id.* at 66, 69. Outside of the 2019 DWI, she had no knowledge that he was having any difficulties with alcohol. *Id.* at 70-71.

The Individual's close friend of eight years, who sees the Individual about two to three times per week, testified that he knew about the Individual's second DWI. *Id.* at 75-76, 79. The friend testified that the Individual told him "[he is] done with drinking," and that the friend stopped drinking alcohol in front of the Individual after the second DWI. *Id.* at 77, 80. Further, he confirmed that he had not seen the Individual consume alcohol since the day of the incident. *Id.* at 78-79. The Individual's friend testified that since abstaining from alcohol, the Individual has "gone back to school" and engages in hobbies like cooking. *Id.* at 80-81, 106.

During his testimony, the Individual described the DOE Psychologist's report as "eye-opening[.]" and he expressed his regret over how he handled the period after the 2019 DWI. *Id.* at 87-88. He also acknowledged that PTSD may have been a larger issue to overcome than he had previously believed, and that he has since enjoyed "a lot of personal growth" and is "in a better place[.]" *Id.* at 90, 93. The Individual admitted that he did not believe that his alcohol consumption was problematic after the first incident in 2019, as he had attributed the incident to the mistaken misuse of sleep medication, but it became apparent to him that his alcohol consumption was problematic after the second incident. *Id.* at 95-97, 132. He testified that he had difficulty controlling the amount of alcohol he was drinking, and he considered himself a social drinker who needed alcohol to "take the edge off[]" in social situations. *Id.* at 97-98. Since seeking and obtaining services at the VA, the Individual has noticed an improvement in his PTSD symptoms and has secured a support system in fellow program attendees and friends. *Id.* at 100-01, 138. The Individual confirmed that he no longer keeps alcohol in his home and that his last drink was the day of the last incident. *Id.* at 107. He stated that for him, "[it is] a hundred percent abstinence from alcohol[]" moving forward, because he is "not ready to go back to something [that has] caused [him] so much pain." *Id.* at 108-09, 132.

The DOE Psychologist testified that diagnostically, the Individual is still in Early Remission, as he had not been abstinent from alcohol for a full twelve months. Nonetheless, she testified, she has seen adequate evidence of reformation and rehabilitation. *Id.* at 142. In coming to this conclusion, the DOE Psychologist considered the fact that the Individual completed a second IOP, attending more hours than the program required, that he participated appropriately in the IOP, that the PEth tests were negative, and that he continued attending aftercare. *Id.* at 142-43. She found the Individual credible and took note of his strong support network. *Id.* at 144. The DOE Psychologist testified that the Individual had a good to very good prognosis, and that although the recommendations she had made required a duration of twelve months, she would not be any more convinced had the Individual implemented her recommendations for the full twelve months. *Id.* at 150.



## V. Analysis

### A. Guideline G

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

There are some facts in this case that by themselves might be cause for concern, but viewed in light of all the circumstances, they do not dissuade me from finding that Individual has mitigated the Guideline G concerns. First, the Individual does have a history of treatment and relapse. Specifically, he previously received treatment in 2019 after an alcohol-related criminal charge, enjoyed a period of abstinence, only to again engage in alcohol-related criminal behavior in 2022 after resuming alcohol use. In addition, at the time of the hearing, the Individual had not yet implemented the DOE Psychologist's recommendations for a full twelve months.

However, on balance, based on the evidence before me, I nonetheless find the Individual has mitigated the Guideline G concerns. Importantly, since the 2022 incident, the Individual has concluded that his alcohol consumption was maladaptive, which was not a conclusion that he had reached in the time following the 2019 incident. Instead, he had attributed the first incident to the mistaken consumption of a sleep medication, only to realize after the second incident that alcohol consumption was problematic. Further, at the time he underwent a psychological evaluation in July 2022, the Individual felt that his PTSD was under some control. Since enrolling in the VA IOP, he has obtained treatment for both his alcohol consumption and his PTSD, increasing the likelihood that he will remain abstinent. Additionally, as the Individual's previous treatment was not successful, he sought out a different treatment program after the 2022 DWI, one that was also designed to address and treat PTSD. Not only did he successfully complete the program, but the Individual continues to attend aftercare sessions on a weekly basis. The testimony indicates and

the PEth test evidence corroborates, that the Individual has been abstinent since the last incident in June 2022. Lastly and importantly, the DOE Psychologist testified that she has found adequate evidence of rehabilitation and reformation, that the additional four or so months of abstinence would not have been any more convincing in her analysis, and that the Individual has a good to very good prognosis.

Accordingly, the Individual has mitigated the stated Guideline G concerns pursuant to the mitigating factors at ¶ 23(b) and (d).

## **B. Guideline J**

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline J include:

- (a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) The individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) No reliable evidence to support that the individual committed the offense; and
- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

As indicated above, the most recent criminal conduct in which the Individual engaged was a direct result of his maladaptive alcohol consumption. Although the fact that the Individual engaged in this sort of criminal conduct on two separate occasions within a two-year period is concerning, I nonetheless conclude that the Individual has mitigated the stated Guideline J concerns. While the last time this criminal conduct occurred was less than one year ago, the Individual has since altered his lifestyle, eliminating the circumstances under which the criminal conduct occurred. Namely, the Individual has remained abstinent from alcohol, completed an IOP that addressed his alcohol consumption and PTSD, and attends Friday aftercare sessions on a weekly basis, which allows him to receive support from professionals and other trusted individuals. Further, as indicated above, the DOE Psychologist testified that the Individual has shown adequate evidence of rehabilitation and reformation and has a good to very good prognosis. "Once the Individual resolves the security concerns raised by his use of alcohol, the associated [Guideline J] concerns pertaining to his alcohol-related arrests will also be mitigated." *Personnel Security Decision*, OHA Case No. PSH-22-0085 at 8 (2022); *Personnel Security Decision*, OHA Case No. PSH-13-0062 at 7 (2013).

Regarding the 2001 drug-related DWI, this drug-related criminal act took place over twenty years ago. Further, I neither have any evidence before me nor has the LSO alleged that the Individual has used or consumed any illicit substances since the 2001 incident. I am convinced that so much time has elapsed since the criminal behavior happened, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Based on the foregoing, I conclude that the Individual has mitigated the stated concerns pursuant to ¶ 32(a).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh  
Administrative Judge  
Office of Hearings and Appeals